

**ORAL ARGUMENT HELD ON MAY 17, 2024  
DECISION ISSUED ON AUGUST 6, 2024**

No. 23-1175 (consolidated with No. 12-1222)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CITY OF PORT ISABEL, *et al.*,

*Petitioners,*

v.

FEDERAL ENERGY REGULATORY COMMISSION,

*Respondent,*

TEXAS LNG BROWNSVILLE, LLC,

*Respondent-Intervenor.*

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On Petitions for Review of Orders of the Federal Energy Regulatory Commission

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**MOTION OF *AMICUS CURIAE* INTERSTATE NATURAL GAS  
ASSOCIATION OF AMERICA, FOR INVITATION TO SUBMIT AMICUS  
BRIEF IN SUPPORT OF PETITIONS FOR PANEL REHEARING OR  
REHEARING EN BANC**

Joan Dreskin  
Christopher Smith  
INTERSTATE NATURAL GAS  
ASSOCIATION OF AMERICA  
25 Massachusetts Avenue, NW  
Suite 500N  
Washington, DC 20001  
Phone: 202.216.5900  
Email: jdreskin@ingaa.org  
Email: csmith@ingaa.org

George P. Sibley, III  
Deidre G. Duncan  
Michelle-Ann C. Williams  
HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Phone: 202.955.1500  
Email: gsibley@HuntonAK.com  
Email: dduncan@HuntonAK.com  
Email: mawilliams@HuntonAK.com

*Counsel for Amicus Curiae Interstate  
Natural Gas Association of America*

October 28, 2024

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29, and D.C. Circuit Rule 26.1, the Interstate Natural Gas Association of America (“INGAA”), states that it is an incorporated, not-for-profit trade association representing most interstate natural gas pipeline companies operating in the United States. INGAA has no parent corporation, and no publicly held company has a 10% or greater ownership interest in INGAA.

Date: October 28, 2024

Joan Dreskin  
Christopher Smith  
INTERSTATE NATURAL GAS  
ASSOCIATION OF AMERICA  
25 Massachusetts Avenue, NW  
Suite 500N  
Washington, DC 20001  
Phone: 202.216.5900  
Email: jdreskin@ingaa.org  
Email: csmith@ingaa.org

Respectfully submitted,

/s/ George P. Sibley, III  
George P. Sibley, III  
Deidre G. Duncan  
Michelle-Ann C. Williams  
HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Phone: 202.955.1500  
Email: gsibley@HuntonAK.com  
Email: dduncan@HuntonAK.com  
Email: mawilliams@HuntonAK.com

*Counsel for Amicus Curiae Interstate  
Natural Gas Association of America*

**MOTION FOR INVITATION TO FILE BRIEF AS *AMICUS CURIAE* IN  
SUPPORT OF INTERVENOR TRANSCONTINENTAL GAS PIPE LINE  
COMPANY, LLC’S PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

The Interstate Natural Gas Association of America (INGAA) respectfully moves for an invitation from this Court, pursuant to D.C. Circuit Rule 35(f) and Federal Rule of Appellate Procedure 29(b)(2), to submit a brief as *amicus curiae* in support of the petitions for panel rehearing and rehearing en banc filed by Respondent-Intervenor Texas LNG Brownsville, LLC. *See, e.g.*, Order, *United Mine Workers of Am. v. Energy W. Mining Co.*, No. 20-7054 (Doc. 1962268) (D.C. Cir. Sept. 6, 2022) (granting similar request for invitation to file *amici curiae* brief in support of rehearing petition); Order, *PHH Corp. v. CFPB*, No. 15-1177 (Doc. 1661675) (D.C. Cir. Feb. 16, 2017) (same); Order, *Nat’l Ass’n of Mfrs. v. SEC*, No. 13-5252 (Doc. 1582585) (D.C. Cir. Nov. 9, 2015) (same); Order, *Elec. Power Supply Ass’n v. FERC*, No. 11-1486 (Doc. 1512775) (D.C. Cir. Sept. 17, 2014) (same).

Respondent the Federal Energy Regulatory Commission (FERC) and Respondent-Intervenor Texas LNG Brownsville, LLC do not oppose Movant’s request. Petitioners oppose this motion. The *amicus* brief conditionally submitted to the Court with this motion adheres to the 2,600-word limit found at Federal Rule of Appellate Procedure 29(b)(4).

As grounds for this motion, Movants state:

1. In supplement to Respondent-Intervenor's petition, INGAA wishes to further explicate how the panel decision conflicts with this Court's precedent and raises "questions of exceptional importance." Fed. R. App. P. 35(b)(1). In particular, the panel decision departs from, and at times disregards, circuit precedent regarding the threshold for preparing a formal Supplemental Environmental Impact Statement (SEIS) under the National Environmental Policy Act (NEPA). Federal agencies traditionally use various non-SEIS procedural vehicles to assess whether new information indicates that the activity under review will affect the environment in a way not previously considered. But the panel opinion in this case seems to endorse the notion that agencies must prepare an SEIS any time new information suggests the activity "might result" in significant impacts not previously considered. Some will read the Court's opinion to create a hair-trigger for formal supplementation that will prevent environmental reviews of major infrastructure projects from ever concluding.

2. The panel decision also departs from and undermines circuit precedent on regarding how agencies and Courts prevent developers from improperly segmenting projects to ease NEPA reviews. The Court appears to adopt a simplistic test that would treat two projects as connected if only one of the projects depends on completion of the other, so long as they are under review at the same time. That

departs from this Court's precedent which looks to the commercial and logistical realities of the two projects to assess substantial independent utility.

8. Movants believe that their proposed brief will be useful to the Court for at least two reasons. *First*, the brief further develops factual and legal reasons for rehearing that are not fully addressed in Respondent-Intervenor's petitions for rehearing. *Second*, because of Movants' experience and expertise in matters related to the regulation of the interstate natural gas industry, as well as the importance of natural gas transportation infrastructure to different segments of the supply chain, they are uniquely situated to provide a critical perspective on the factual, legal, and policy issues implicated by the panel decision, as well as the practical reasons why rehearing is warranted. This unique perspective is not provided by any other party or *amicus*. See Fed. R. App. P. 29(a)(3).

9. Consistent with D.C. Circuit Rule 29(d), Movant is aware that other entities have sought or may seek leave to file *amicus* briefs in support of Respondent-Intervenor's petitions. However, to Movant's knowledge, all other prospective *amici* have distinct interests and perspectives based on their business or associational purposes, sufficiently different from Movants' interests to render joint briefing with them impracticable. See D.C. Cir. R. 29(d). To the extent possible, Movant has endeavored to coordinate with Respondent-Intervenor and other prospective *amici curiae* to avoid duplicative briefing.

## CONCLUSION

For the foregoing reasons, Movant respectfully requests that the Court invite it to file the accompanying brief as *amicus curiae*.

Date: October 28, 2024

Joan Dreskin  
Christopher Smith  
INTERSTATE NATURAL GAS  
ASSOCIATION OF AMERICA  
25 Massachusetts Avenue, NW  
Suite 500N  
Washington, DC 20001  
Phone: 202.216.5900  
Email: jdreskin@ingaa.org  
Email: csmith@ingaa.org

Respectfully submitted,

/s/ George P. Sibley, III  
George P. Sibley, III  
Deidre G. Duncan  
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HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Phone: 202.955.1500  
Email: gsibley@HuntonAK.com  
Email: dduncan@HuntonAK.com  
Email: mawilliams@HuntonAK.com

*Counsel for Interstate Natural Gas  
Association of America*

## CERTIFICATE OF COMPLIANCE

1. This motion complies with the word limit of Fed. R. App. P. 27(d)(2) because it contains 701 words, excluding the parts exempted by Fed. R. App. P. 32(f) and 27(d)(2), as determined by the word-counting feature of Microsoft Word.

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft 365 in Times New Roman 14-point font.

Date: October 28, 2024

Respectfully submitted,

/s/ George P. Sibley, III

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Deidre G. Duncan

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HUNTON ANDREWS KURTH LLP

2200 Pennsylvania Avenue, NW

Washington, DC 20037

Phone: 202.955.1500

Email: gsibley@HuntonAK.com

Email: dduncan@HuntonAK.com

Email: mawilliams@HuntonAK.com

*Counsel for Interstate Natural Gas  
Association of America*

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25, I hereby certify that, on October , 2024, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

Date: October 28, 2024

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/s/ George P. Sibley, III

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Deidre G. Duncan

Michelle-Ann C. Williams

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2200 Pennsylvania Avenue, NW

Washington, DC 20037

Phone: 202.955.1500

Email: gsibley@HuntonAK.com

Email: dduncan@HuntonAK.com

Email: mawilliams@HuntonAK.com

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